

No. 9/9/86-6Lab./9663.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the Workman and the management of  
(i) Secretary, Haryana State Electricity Board, Chandigarh, (ii) Executive Engineer, City Division, H.S.E.B., Gohana Road, Panipat.

BEFORE SHRI S.B. AHUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA;  
FARIDABAD

Reference No. 241 of 1983

*between*

SHRI KARTAR SINGH WORKMAN C/O SH. KARAN SINGH, BHARITYA MAZDOOR SANGH G.T. ROAD, PANIPAT AND THE MANAGEMENT OF SECRETARY HARYANA STATE ELECTRICITY BOARD, CHANDIGARH (2) EXECUTIVE ENGINEER CITY DIVISION H.S.E.B., GOHANA ROAD, PANIPAT.

*Present—*

Shri Karan Singh for the workman.  
Shri Narinder Pal Singh for the Management.

#### AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Kartar Singh, workman and the Management of (1) Secretary, Haryana State Electricity Board, Chandigarh. (2) Executive Engineer City Division, H.S.E.B., Gohana Road, Panipat to this Tribunal for adjudication :—

Whether the termination of services of Shri Kartar Singh was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of order of reference, notices were issued to both the parties. The parties put in appearance.

3. The case of the petitioner is that he was employed as A.L.M. in Haryana State Electricity Board with effect from 1st January, 1971 and was getting Rs. 484 per month. His services were illegally terminated on 23rd February, 1981 by the respondent without compliance of provisions of Industrial Disputes Act, 1947. He prayed for reinstatement with all back wages.

4. The case is contested by the respondent. It was pleaded that the claim of the petitioner is bad for non-joinder of the proper parties and the reference is not maintainable. It was also pleaded that the reference is bad for laches and delay. On merits, it was alleged that the claimant proceeded on leave for 2nd April, 1980 and 3rd April, 1980 and thereafter he did not report for duty though he was asked several times to resume his duty. Even notice was published in leading News Papers directing him to resume duty, but the claimant failed to report for duty. Ultimately chargesheet was prepared and sent to him by registered post but the same was received back undelivered. Hence the services of the claimant were terminated on account of grave misconduct. It was also pleaded that the termination of services of the claimant was in accordance with the rules as the Management had no alternative except to terminate his services on the failure of the claimant to resume duty.

5. On the pleadings of the parties, the following issues were settled by Shri R.N. Batra, the then Presiding Officer, Industrial Tribunal, Haryana, Faridabad :—

(1) Whether the claim petition is bad for non-joinder of the proper party as pleaded ? OPM

(2) Whether the reference is not maintainable as pleaded ? OPM

(3) Whether the reference is bad for laches and delay as pleaded ? OPM

(4) Whether the termination of service of Shri Kartar Singh was justified and in order ? If not, to what relief is he entitled ?

6. I have heard the learned Authorised Representatives of the parties, my findings on the aforesaid issues are as under :—

7. *Issue Nos. 1, 2 and 3.*—The representative of the respondent did not press these issues during the course of argument and as such all these issues are decided against the Management.

8. *Issue No. 4.*—Prem Sagar Lamba, Head Clerk MW-1 deposed that claimant proceeded on leave for 2nd April, 1980 and 3rd April, 1980 and thereafter he did not resume duty despite the fact that several letters were

written to him directing him to join duty. The copies of the letters are Ex. M-1 and M-2. He also deposed that notices were also published in the Tribune and Hindustan Times and Punjab Kesari directing him to join duty but even then he failed to report for duty. News Papers are Ex. M-3, M-4 and M-5. He also added that thereafter the chargesheet was prepared and same was dispatched at his permanent address but no reply was received and thereafter his services were terminated by a letter Ex. M-7.

9. Kartar Singh claimant on the contrary stated that after one month after expiry of leave, he reported for duty but the Management did not permit him to join duty. He stated that no compensation was paid to him.

10. On the perusal of the evidence led by both the parties, it is apparant that the claimant proceeded on leave for two days viz., for 2nd April, 1980 and 3rd April, 1980 and thereafter he did not report for duty. The Management wrote him various letters directing him to resume duty and thereafter got notices published in leading News Papers asking him to join duty but to no effect. News papers are Ex. M-3, M-4 and M-5. When the claimant failed to report for duty, the chargesheet was prepared and the same was sent to him by registered post, but no reply was received. Thereafter his services were terminated with retrospective effect with effect from 2nd April 1980 by order passed on 23rd February, 1981. Copy of the order is Ex. M-7.

11. The management claims that the employee committed grave misconduct by remaining wilfully absent from duty and as such his services were terminated by way of punishment. In other words, the Management's case is that the termination is punishment inflicted upon the employee by way of disciplinary action and as such the same does not amount to retrenchment within the meaning of Section 2 (oo) of the Act. The action taken by the Management is not in accordance with the rules and violates the principles of natural justice. After serving of chargesheet, no domestic enquiry was ever conducted. It was incumbent upon the Management to hold a domestic enquiry on the basis of the chargesheet but no such steps were taken. Thus action of the Management cannot be sustained as the same offends the principles of natural justice. The claimant was not afforded an opportunity to defend him before the Enquiry Officer. Consequently, the termination of services of the claimant is not justified and the same cannot be sustained. Accordingly I set aside the order of termination of services of the claimant and direct that he should be reinstated forthwith.

12. The claimant served demand notice on 18th September, 1982 i.e. after lapse of one year and seven months after passing of order of termination against him. He has not given any cogent reasons why the demand notice was served by him after delay of one and half years. The ends of justice would be met, if the claimant is allowed back wages w.e.f. 18th September, 1982 i.e. the date when he served demand notice. I order accordingly. The award is passed accordingly. No order as to cost.

Dated the 16th October, 1986.

S. B. AHUJA,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

Endorsement. No. 664, dated 21st October, 1986.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

S. B. AHUJA,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

No 9/9/86-Lab/10001.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the Workman and the management of (i) The Executive Engineer System Improvement Construction, Division H.S.E.B., Karnal (ii) Secretary, H.S.E.B., Chandigarh.

BEFORE SHRI S.B. AHUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,  
HARYANA, FARIDABAD.

Reference No 406, of 1982, 186/1983, 469/1982, 468/1982,  
409/1982, 407/1982, and 408/1982.

Between

SARVSHRI RAM KARAN, JASWANT SINGH, RAMESHWAR, JAIPAL SINGH, RAM KISHAN,  
SUBE SINGH AND MAHAVIR SINGH AND THE MANAGEMENT OF  
THE EXECUTIVE ENGINEER SYSTEM IMPROVEMENT CONSTRUCTION  
DIVISION, HARYANA STATE ELECTRICITY BOARD, KARNAL AND  
(2) SECRETARY, HARYANA STATE ELECTRICITY BOARD, CHANDIGARH.

Present.—Shri Karan Singh Authorised Representative for the workman.

Shri Narinder Pal Singh, Authorised Representative for the management.

## AWARD

By this award, I would dispose of 7 connected references bearing Nos. 406/1982 Shri Ram Karan, 186/1983 Shri Jaswant Singh, 469/1982 Shri Rameshwar, 468/1982 Jaipal Singh, 409/1982 Shri Ram Kishan, 407/1982 Shri Sube Singh and 408/1982 Shri Mahavir Singh.

2. The workmen were appointed T/Mates by the Haryana State Electricity Board on the dates specified against their names :—

<i>Name of the workman</i>	<i>Date of appointment</i>
(1) Ram Karan	.. 20-9-1979
(2) Jaswant Singh	.. 14-11-1980
(3) Rameshwar	.. 23-9-1979
(4) Jaipal Singh	.. 23-9-1979
(5) Ram Kishan	.. 25-9-1979
(6) Sube Singh	.. 20-9-1979
(7) Mahavir Singh	.. 20-9-1979

3. The services of the aforesaid workmen were allegedly terminated on 20th May, 1982 except of Jaswant Singh whose services were terminated on 22nd April, 1982. The workman raised demand under Section 2-A of the Industrial Disputes Act, 1947 alleging that their services have been terminated without any enquiry or chargesheet and prayed for reinstatement with all back wages.

4. On receipt of their demand notices, the conciliation proceedings took place before the Labour Officer cum-Conciliation Officer and ultimately he submitted failure report to the Government.

5. The Governor of Haryana referred the industrial dispute between aforesaid workmen and the Management, to this Tribunal in exercise of the powers contained in Section 10(1) (d) of the Industrial Disputes Act, 1947 for adjudication on the question 'whether the termination of services of aforesaid workmen was justified and in order ?

6. On receipt of order of reference notices were issued to the parties.

7. The cases were contested by the respondent.

8. The workmen did not file any claim statement and stated that their demand notices be treated as claim statement.

9. The respondent took the plea that the workmen have left the services by their own accord and did not resume duty inspite of the letters written by Executive Engineer, System Improvement Construction Division, Haryana State Electricity Board, Karnal. Their stand was that the workmen had abandoned the services and that their services were never terminated. Besides this, the plea was taken that the reference is bad for non joinder of necessary party and that the respondent is not an industry as defined under Industrial Disputes Act, 1947 and this Tribunal has no jurisdiction to entertain the reference. It was also pleaded that the reference is barred under Section 82 of the Electricity (Supply) Act, 1948 and that the workmen are gainfully employed.

10. On the pleadings of the parties, the following issues were settled by my predecessor Shri R.N. Batra :—

- (1) Whether the reference is bad for joinder of the necessary party as pleaded ? OPM
- (2) Whether the respondent is not an industry as pleaded ? OPM
- (3) Whether the reference is barred under Section 82 of the Electricity (Supply) Act, 1948 ? OPM
- (4) Whether the claimant is gainfully employed as pleaded ? OPM
- (5) Whether the termination of services of the claimant was justified and in order ? If not, to what relief is he entitled ? OPM
- (5-A) Whether the claimant abandoned the job of this own accord as pleaded ? OPM

11. All the aforesaid 7 references were consolidated because common question of facts and law were involved therein and proceedings were held in reference No. 406/1982 and this award would dispose of aforesaid 7 references.

12. The workmen examined one of the workman Shri Ram Krishan and produced on the record documents Ex. W-1 to W-11, whereas the Management examined Balbir Singh, Head Clerk and produced on record documents Ex. M-1 to M-12.

13. I have heard Shri Karan Singh Authorised Representative of the workmen and Shri Narinder Pal Singh of the Management and perused the record. My findings on the aforesaid issues are as under:—

#### Issues No. 1, 2, 3, and 4.

14. All these issues were not pressed during the argument and as such are answered against the Management.

#### Issue No. 5 and 5-A.

15. Both these issues are interconnected and would be decided together. Shri Ram Krishan WW-deposed that they were employed in Haryana State Electricity Board in System Improvement Construction Division in the year 1979 and that their services were terminated on 20th May, 1982 except of Jaswant Singh whose services were terminated on 22nd April, 1982. He stated that they came to Karnal and met Executive Engineer but he refused to take them on duty. He also stated that during the pendency of the reference, the Management representative made statement to the effect that the workman had left the job of their own accord and the Management was willing to take them on duty. In view of the aforesaid position of the Management's Authorised representative, they again approached the Management to take them back on duty but in vain. He also stated that no notice pay or compensation was given to them when their services were terminated.

16. Balbir Singh MW-1 deposed that the workmen absented themselves on their own accord. He admitted that no letter was written to the claimants regarding their absence from duty. He also stated that the workmen came to resume duty on 1st March, 1983 when Executive Engineer gave direction to the concerned S.D.O. to take them on duty. He also deposed that the claimant did not resume duty and ultimately their names were struck off from the muster rolls in May, 1982 and copies of the muster rolls are Ex. M-4 to M-12.

16. There is no dispute that the workmen remained in continuous service from more than one year prior to their alleged termination of service. The Management had taken the plea in the written statement that the workmen has abandoned their job of their own accord and their services were never terminated. The plea taken by the management is not established by any cogent or satisfactory evidence.

17. To constitute abandonment of service, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. Abandonment or relinquishment of services is always, a question of intention and normally such an intention cannot be attributed to an employee without adequate evidence in that behalf. (See—in case of *G.T. Lad and Other v. Chemicals Fibres India Ltd.* 1979-Lab.I.C. page 290). The plea of the Management regarding abandonment of services by the workman is inconsistent. The Management was taking different pleas on different times. During the conciliation proceeding the Management stand was that Sarvshri Sube Singh, Mahavir Singh, Ram Karan, and Ram Krishan Workmen had misbehaved with Junior Engineer and their work and conduct were not found satisfactory. It was also their stand that 10 days prior, notices were issued to the workmen before terminating their services. Besides this they also pleaded before the Conciliation Officer that the workmen had left their duty with effect from 20th May, 1982. However the letters Ex. W-1, W-2 and W-3 indicate that the services of Jaipal Singh, Rameshwar and Jaswant Singh were terminated with immediate effect and the same were passed on 22nd June, 1982. However the letter Ex. W-5 written by the Management shows that Sarvshri Ram Krishan, Sube Singh, Ram Karan and Mahavir Singh had disobeyed Junior Engineer and misbehaved with him and they were served with 10 days notice which has to expire on 31st May, 1982 and that the workmen were informed that they would not be taken on duty after expiry of notice. Thus it is apparent that services of the workmen were dispensed with for different reasons and it cannot be inferred that they had abandoned their services of their own will. If the workmen left the services of their own accord they would not have served demand notice on 6th June, 1982 i.e. immediately when they were stopped to work with the Management. The documents Ex. M-1 to M-3 relied by the Management do not advance the case of the Management in any manner. Thus the correspondence took place after the March, 1983 whereas the workmen were not allowed to join duty from May, 1982. It has come in the testimony of Balbir Singh Head Clerk that the names of the workmen were struck off from the muster roll in May, 1982. It has been held by the Supreme Court in case of *H.D. Singh v/s. Reserve Bank of India* 1985-Lab.I.C. page 1733 as under:—

'Striking off the name of a workman from the rolls by the employer amounts to termination of service and such termination is retrenchment within the meaning of S. 2(oo) if effected in violation of the mandatory provision contained in Section 25-F of the Industrial Disputes Act, 1947 and is invalid'.

18. In our instant case, the provision of Section 25-F were not observed at all while terminating the services of the aforesaid workmen. The statement of Ram Krishan WW-1 clearly shows that the workman has not abandoned the service of their own accord but they were not given duty by the Management without any valid reasons. Thus I hold that the termination of the services of the aforesaid 7 workmen namely Shri Ram Karan, Jaswant Singh, Ramehswar, Jai Pal Singh, Ram Krishan, Sube Singh and Mahavir is invalid. They are entitled for reinstatement with all back wages. Accordingly I direct that all the aforesaid workmen be reinstated and given all back wages with continuity of service. The award is passed accordingly.

Dated 24th October, 1986.

S. B. AHUJA,

Presiding Officer,

Industrial Tribunal, Haryana,  
Faridabad.

Endst. No. 675, Dated 31st October, 1986.

Forwarddd (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

S. B. AHUJA,

Presiding Officer,

Industrial Tribunal, Haryana,  
Faridabad.

The 24th November, 1986

No 9/6/86-6Lab/9310.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala, in respect of the dispute between the workman and the management of G.M. Haryana Roadways, Yamunanagar.

IN THE COURT OF SHRI V. P. CHAUDHARY, PRESIDING OFFICER, LABOUR  
COURT, AMBALA

Reference No 16 of 1984 (Old No 404 of 1983)

SHRI INDER RAJ, WORKMAN, C/O. SHRI RAJESHWAR NATH, TIMBER MARKET, AMBALA  
CANTT. AND THE MANAGEMENT OF THE MESSRS G.M. HARYANA ROADWAYS  
YAMUNANAGAR.

*Present:—*

Shri Rajeshwar Nath, for workman.

Shri Rama Kant, ADA for respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred,—*vide* clause (C) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 referred dispute between Shri Inder Raj workman and G.M. Haryana Roadways, Yamuna Nagar to Labour Court, Faridabad. The terms of the reference are as under:—

Whether termination of services of Shri Inder Raj, workman, is justified and correct, if not to what relief is he entitled ?

On constitution of Labour Court at Ambala in April, 1984, this reference was received by transfer.

Workman alleged that he was in the employment of Respondent-Management as Conductor. He was checked by an Inspector on the basis of the same he was suspended, enquiry was conducted against him which was not fair. Ultimately he was dismissed from service. He further alleged that the dismissal, in question, is against the natural principles of justice and also violative to section 25.(F) of Industrial Disputes Act, 1947. He prayed for his reinstatement with continuity in service and with full back wages.

Respondent Management contested the dispute and contended that Shri Kehar Singh, Inspector checked the bus of workman and found that he had embezzled a sum of Rs. 15 on the basis of the same the submitted a complaint against the workman to the General Manager. On the basis of this complaint an enquiry officer was appointed, enquiry was conducted in a proper manner. Workman was given full opportunity to cross examine the witnesses and to lead defence evidence which he availed. G.M. afforded an opportunity of personal hearing to the workman before terminating his service. Thereafter workman went in appeal to S. T.C. which was dismissed.

Workman filed replication through which he controverted the allegations of the respondent-management.

On the pleadings of the parties the following issues were framed :—

**Issues:**

1. Whether termination order dated the 11th December, 1981 is justified, if not its effect ? OPM
2. Relief.

I have heard Authorised Representatives of the parties and have perused the oral and documentary evidence placed on the file. My issue wise findings are as under :—

**Issue No 1 :**

In support of this issue management examined Shri Satya Parkash, Clerk of Haryana Roadways, Depot Yamuna Nagar. He stated that a charge sheet regarding the embezzlement of public funds was served upon the workman which he replied. Reply of the workman was found unsatisfactory, so Shri Bishan Dass Bhatia, Traffic Manager, Ambala was appointed Inquiry Officer. Inquiry Officer conducted the enquiry proceedings and found workman Inder Raj guilty. Second show cause notice was issued to Shri Inder Raj which was replied by him. G.M. Haryana Roadways, Depot Yamuna Nagar summoned the workman and afforded personal hearing to him. Thereafter his services were terminated. Workman went in appeal against the termination order to State Transport Commissioner but his appeal was also dismissed.

Shri Inder Raj stated that on 26th June, 1976 his bus was checked by Shri Kehar Singh, Inspector at Gangaheri. Two passengers were sitting with some luggage, he had issued two tickets to the passengers and three tickets for the luggage which they were carrying when the Inspector checked the bus, the passengers only presented their two tickets to the Inspector for inspection and three tickets pertaining to the luggage were withheld by them, in other words those tickets were not shown to the Inspector. He requested the Inspector to check his way bill and cash but the Inspector did not do so. He further stated that during the enquiry proceedings the passengers were not examined. In cross-examination he stated that he submitted replies of a charge-sheet and both show cause notice. He cross-examined the witnesses. G.M. afforded him an opportunity of personal hearing. He was also afforded an opportunity to lead defence evidence. He filed an appeal to S.T.C. against the order of G.M. that was dismissed.

In view of the above evidence I am of the considered opinion that Ld. A.R. of workman has laid much emphasis that Inquiry Officer and Shri Kehar Singh, Inspector were not examined, so it is not proved that enquiry was held in a proper way and was fair. But I think that no doubt the Inquiry Officer and Shri Kehar Singh did not appear in the witness box does not even with the case of Management is not proved. Statement of Shri Inder Raj is sufficient to prove the case of the Management because workman himself stated that he had issued two tickets two passengers and three tickets for their luggage when the Inspector Shri Kehar Singh checked the bus. The passengers knowingly withheld three tickets of the luggage and did not produce before Shri Kehar Singh for inspection on the basis of the same charge of embezzlement of three tickets of the value of Rs. 15 had been levelled against him. From the statement it is not proved or established on the file that what enmity those passengers had with Shri Inder Raj and why they withheld three tickets of luggage and why they did not produce those tickets to the Inspector for inspection.

Workman Shri Inder Raj has also not alleged what enmity he had with Shri Kehar Singh, Inspector. There is also nothing on the file that why Shri Kehar Singh, Inspector lodged a false complaint against him to G.M. There is also nothing on the file that why he was not believed by the Inquiry Officer and by his G.M. So it is evident that the case of embezzlement of Rs. 15 is proved against the workman.

No doubt the complainant and Inquiry Officer did not turn up to support the case of the management even then workman has admitted himself that charge-sheet was received by him he replied to that charge-sheet. The witnesses who appeared against him were cross-examined by him. He availed an opportunity of leading defence evidence. He was summoned by General Manager and was given an opportunity of personal hearing before terminating his services. All these facts have been admitted by the workman himself. It is settled law admission is the best evidence which could be safely relied upon by the opposite party.

In addition to the admission of Shri Inder Raj Shri, Satya Parkash, Clerk of Haryana Roadways, Depot Yamuna Nagar has supported the management version, so a charge of embezzlement of sum of Rs. 15 by workman stands proved. The termination order on the basis of embezzlement of public funds by the workman is well founded and termination on the basis of charge of embezzlement is justified and correct, so this issue is decided, in favour of, management against the workman.

#### Issue No. 2

For the fore going reasons on the basis of my discussion on issue No. 1 the termination of Shri Inder Raj workman is just and correct. The reference is answered accordingly and I pass award regarding the dispute between the parties.

Dated the 23rd September, 1986.

V. P. CHAUDHARY,

Presiding Officer,  
Labour Court, Ambala.

Endst. No. 2444, dated the 24th September, 1986.

Forwarded (Four Copies) to the Financial Commissioner and Secretary to Government, Haryana Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,

Presiding Officer,  
Labour Court, Ambala.

No. 9/6/86-6Lab/9388.—In pursuance of the Provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala, in respect of the dispute between the Workman and the management of M/S (i) Haryana State Small Industries & Export corporation Ltd. Jind (ii) Haryana State Small Industries & Export Corporation Ltd., Chandigarh.

IN THE COURT OF SHRI V. P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT,  
AMBALA

Ref. No. 131 of 1984

(Old No. 16 of 1983)

SHRI OM PARKASH C/O SHRI D.P. PATHAK TRADE UNION COUNCIL 754/4, PACHRANGA BAZAR, PANIPAT AND THE MANAGEMENT OF THE MESSRS HARYANA STATE SMALL INDUSTRIES & EXPORT CORPORATION LTD. JIND (II) HARYANA STATE SMALL INDUSTRIES & EXPORT CORPORATION LTD., CHANDIGARH

*Present.*—Shri D. P. Pathak for workman.

Shri B. S. Sharma for respondent.

#### AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred,—*vide* clause (C) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 referred dispute between Shri Om Parkash and Messrs Haryana State Small Industries & Export corporation Ltd. etc. to Labour Court, Rohtak. The terms of the reference are as under:

“Whether termination of services of Shri Om Parkash workman was justified and in order, if not to what relief is he entitled?”

Labour Court at Ambala was constituted in April, 1984 so this reference was received by transfer.

Workman through his demand notice alleged that he was in the service of respondent management as a Peon-cum-Chowkidar. His services were terminated on 11th August, 1982 without any notice charge-sheet, enquiry or without making payment of pay, in lieu of, notice period and Retrenchment compensation. He prayed that he remained in the service of respondent-management for about 2½ year. He further prayed that he be got reinstated with continuity in service and with full backwages.

Respondent-management contested the dispute and contended that Shri Om Parkash, son of Shri Sheo Chand was engaged by the Corporation to work in its Branch Officer under D.P.O. Yamuna Nagar on daily wages at payment of Rs. 8 per day *vide* office order dated 11th August, 1980. Later on he was transferred to Raw Material Depot Jind as a Peon-cum-Chowkidar on 21st March, 1980 where he served up to 10th August, 1982. Shri Om Parkash left the service of his own with effect from 11th August, 1982 and thereafter he never reported on duty. It was also contended that Haryana State Small Industries and Export Corporation Ltd., is not a factory, so this application is not maintainable in this Court. It was also contended that Shri Om Parkash was working on daily wages in the respondent management. He left his service of his own, so he cannot be absorbed on regular basis in the Corporation.

On the pleadings of the parties the following issues were framed:

#### Issues:

1. Whether termination order dated 11th August, 1982 is justified and correct, if not its effect ? OPM
2. Relief.

I have heard Shri D.P. Pathak Authorised Representative for workman and Shri B. S. Sharma, Authorised Representative for respondent-management and have perused the oral and documentary evidence placed on the file. My issue-wise findings are as under:

#### Issue No. 1 :

Onus of this issue was upon the respondent-management, Respondent to discharge onus of this issue examined MW-1 Shri R. K. Nain Branch Manager who stated that he used to employ labourers on daily wages according to requirement of the respondent. Similarly Om Parkash workman was in the service of respondent-management on daily wages. He further stated that services of Shri Om Parkash were never terminated by the respondent-management, in fact he left his job of his own, on 11th August, 1982. In cross-examination he stated that letter Ex-A-1 was issued under his signatures. He further stated that Shri Om Parkash served the respondent-management from 21st March, 1980 to 31st March, 1982. He also stated that no notice was issued for the termination of services of Shri Om Parkash. No pay in lieu of, notice period was paid to the work man. No retrenchment compensation was even paid to workman.

In addition to above oral evidence respondent-management tendered into evidence document Ex-M-1 which is an office order,—*vide* which Om Parkash workman was employed as a Peon-cum-Chowkidar on daily wages at the rate of Rs. 8 per day with immediate effect till such time a regular arrangement is made. Workman was directed to report for duty to District Project Officer, Yamuna Nagar. This order is dated 11th January, 1980, Ex-M-2 is joining report of Shri Om Parkash Ex. M-3 is a joining report of Shri Jogi Ram as a Chairman of respondent-management. Shri Jogi Ram, M.L.A. was appointed as a Chairman,—*vide* order Ex. M-2. *vide* Ex. M-5 resignation of Shri Jogi Ram, M.L.A. was accepted. Ex. M-6 is a resignation of Shri Om Parkash from his service. Ex. M-7 is letter *vide* which resignation of Shri Om Parkash was despatched to Secretary. Ex.M-8 is an application *vide* which Shri Om Parkash made a prayer that his resignation be withdrawn. Ex.M-9 is a letter from District Project Officer to establishment Officer, Chandigarh *vide* which application of Shri Om Parkash was forwarded for withdrawal of his resignation. *vide* Ex.M-10 is an application of Shri Om Parkash *vide* which he submitted his joining report to Project Officer, of the respondent-management. Similarly, Ex.M-11 is a joining report. Ex. M-12 is a certificate which gives discription of the pay of Shri Om Parkash Ex. M-12/A to Ex.M-12/G are the vouchers *vide* which pay of Shri Om Parkash was disbursed.

Workman Shri Om Parkash appeared in the witness box as AW-1 he stated that he was in the service of respondent-management. His services were terminated on 11th August, 1982 by the respondent-management without issuing any notice, without making payment of pay, in lieu of, notice period and without making payment of retrenchment compensation. He produced his experience certificate Ex. A-1 which was issued by MW-1 as admitted by him. In cross-examination this witness stated that no appointment letter was given to him. Shri Jogi Ram Ex. M.L.A. is his brother-in-law. He further stated that he did not know whether he was Chairman of respondent-management or not.

As I have mentioned in discussions of issue No. 1 with the opening line that onus of this issue is upon the respondent-management, respondent is to justify whether termination order of the services of workman is just and correct.

The management has taken a clear stand that workman left his job of his own, in other words respondent-management never terminated services of the workman. Shri B.S. Sharma has argued that the workman is a liar he should not be believed. He tendered into evidence appointment letter of Shri Om Parkash to which Workman denied. He also tendered Photostat copies of appointment of Shri Jogi Ram, M.L.A. as a Chairman of respondent Ex.M.-4. Joining report Ex.M-3. Resignation of Shri Jogi Ram, M.L.A. Ex.M-5.



He also tendered into evidence Ex.M-6, which is resignation of Shri Om Parkash dated 11th February, 1980 which was later on withdrawn by him. *Vide* Ex.M-8 and after that he again remained in service of the respondent-management up to 11th August, 1982.

The above arguments that workman be termed as a liar cannot be accepted because the letter of appointment which was issued to the workman might not have been received by him, so the workman denied this fact. Secondly, the workman might be apprehending some adverse by accepting that his brother-in-law Shri Jogi Ram used to be Chairman of respondent-management.

The resignation was tendered by Shri Om Parkash on 11th February, 1980 which was withdrawn and thereafter he served the respondent-management upto 11th August, 1982, so that resignation Ex-M-7 has got no significance and no relevancy with the present dispute.

It is admitted fact between the parties that workman served the respondent up to 11th August, 1982. The conduct of the respondent-management is very strange because when the workman absented it was duty of respondent-management to have issued a letter calling for the workman to report on duty. In the absence of the same it should have terminated service of the workman on the ground of an absentee but no such action was taken by the respondent-management. It clearly shows that respondent-management terminated services of the workman without issuing any notice, without making payment of any pay of the period, in lieu of, notice and no retrenchment compensation was ever paid to the workman. Respondent-management Officer/Official to save themselves from the above responsibility have made out a case in their defence that Shri Om Parkash abandoned the job and his services were not terminated, so the case of the respondent-management cannot be accepted, and it has to be taken that services of workman were terminated by the respondent-management.

The another circumstance which also goes against respondent-management is that when demand notice was issued by the workman that the management has terminated his services without any notice, in query, charge-sheet or without making payment of any retrenchment compensation since then there is no offer from the side of the respondent that it is willing to take Shri Om Parkash again in its service that clearly shows that respondent-management has terminated services of the workman in violation of section 25 (F) of Industrial Disputes Act, 1947.

Shri B.S. Sharma, Ld. Authorised Representative of respondent-management further argued that workman did not claim back wages in his statement. There is a clear reply to this fact that the Authorised Representative failed to examine workman on this aspect which does not mean that a poor Workman who is un-aware of legal complications can be punished for the commissions and lapses of his Authorised Representative, so I hold that when he has made his claim for backwages in his demand notice which has been received from the Government to this court alongwith reference, so the workman is entitled to the back wages.,

Shri B.S. Sharma also drawn my attention towards statement of claim which is not signed by the workman nor by the Authorised Representative. However, it has been drafted in the pen of Authorised Representative. But when in the present case signed demand notice from workman is on the file, in those circumstances; the statement of claim has got no significance. Moreover when the issues were framed no such objection was raised that the statement of claim is unsigned and unverified. At that time no issue was got framed, so at this stage this objection is futile cannot be looked into nor this contention carries any weight in the presence of the fact that the demand notice is properly signed.

In view of above discussions I am of the considered opinion that the case of the respondent-management that Shri Om Parkash workman abandoned his job is not established nor the respondent-management could establish that it terminated the services of workman in a just and correct manner, so termination of Shri Om Parkash is unjust and illegal and incorrect, so he is entitled to reinstatement from 11th August, 1982 with continuity in service and with full back wages. So this issue is decided in favour of workman against the respondent-management.

**Issue No. 2:**

For the foregoing reasons on the basis of my findings on Issue No. 1 I order reinstatement of Shri Om Parkash workman from 11th August, 1982 with continuity in service and with full back wages. I pass award regarding the dispute between Shri Om Parkash, Peon-cum-Chowkidar and respondent-management accordingly.

Dated 29th September, 1986.

Endst. No. 2505, dated 30th September, 1986.

Forwarded (Four Copies) to the Financial Commissioner & Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,  
Presiding Officer,  
Labour Court, Ambala.

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